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One of the most difficult areas in Family Law practice centers around custody, support and parenting time. In 35 years of practice I have reached the conclusion that the current system results in more harm than good. For a multitude of reasons these areas are, many times, hotly contested resulting in the dramatic increase in animosity between the parties and a corresponding increase in dysfunctional children. Sometimes the issue is simply one of money. A parent seeks to contest custody, not because he/she is truly interested in parenting the children but to reduce the amount of support he/she must pay or, alternatively, to increase the support he/she will receive. However in many other cases both parents truly wish to participate in the lives of their children but the system causes the fact finder to gravitate towards a situation where one parent has the primary custody and the other is a weekend parent. These cases are ones where there is an aggressive approach by both sides and when it is done, there are bitter feelings that, in most cases, permeate the atmosphere in which the children are raised.

I have some thoughts about this. I would suggest that the starting point for the Courts in terms of custody of the children be one of joint legal custody and shared physical custody. By shared physical custody I mean that each parent spends equal time with the children during the year. The method of accomplishing this I would leave to the discretion of the trial court or the parties. It could mean, for example, the second half of the summer school vacation period plus first semester of the school year with parent A and the second semester plus the first half of the summer school vacation with parent B [the parties would still alternate major holidays and during the time a parent did not have physical custody of the children that parent would have an alternate weekend parenting time]. There are as many variations of this theme as one could imagine but the starting point would be equal time with each parent.

From this starting point adjustments could be made. If a parent had no desire to parent his/her children, or it was not in the child's best interests, and a court so found by clear and convincing evidence, then a court would be justified in making a different custodial arrangement. However it would have to be made clear that the mere fact that one parent was a stay at home parent and the other worked to provide for the family would not be a factual basis to make an award different from shared physical custody. Too many times persons in the traditional family roles; father works fulltime and does the manual labor items around the home; mother is a stay at home mom or works part time and does the nurturing things plus the normal housework, find that when it comes to a marriage dissolution and custody situation, the mother is given preference because of the roles they played during the marriage. This is both unfair and unrealistic. When circumstances change, persons can, and do, change their patterns of behavior.

It could be argued that such a drastic change in thought is unrealistic as we are a mobile society and how can this work if parents live in two different school districts, many miles apart. My response to this is that once a couple makes the

choice to have children, they give up many of the freedoms they enjoyed when single or when married without children. One of those freedoms that is lost is the freedom to move wherever you wish. My position would be that either parent could move wherever they wanted but if they elected to so do, then they give up the opportunity to share the physical custody of their children. In order to maintain a shared physical custody arrangement they must continue to live in a situation such that the children can continue to attend the same school as they did prior to the marriage breakup and within such proximity to each other as to not be a burden to either party to effectuate parenting time as well as school.

Such an approach would then, necessarily require an application of a shared economic responsibility approach to child support. One must always keep in mind that child support is for the support of the children. Too many times I have seen child support as being the sole means of support for the children and the custodial parent. I support the reduction in the number of overnights required for this approach to be applicable. If a parent is to truly parent the children during the parenting time, he/she must have living quarters that will accomodate the children; must feed them, entertain them etc. Additionally non-custodial parents do buy clothes and other necessities of life for the kids because so many times the custodial parent does not send clothes with the children for parenting time. As everyone knows it is not cheap to have kids, no matter how long the length of time. Further, the current schedules are blatantly skewed in favor of the custodial parent. Just for fun take a family with 2 children. The wife does not have an income and the husband earns \$1,000.00 per week. The wife has sole custody. Child support would be \$998.00 per month. Change the scenario and suddenly the wife is earning \$2,000.00 per week. The support paid by the father is \$736.00 per month. The result: The wife's income goes from 0 dollars per month to \$2000.00 per month and the support only reduces \$262.00. This not a fair result. The formula needs some major adjustments.

The Court also needs to address whether the guidelines are mandatory or can a local court do as it pleases. Currently one of the Courts in which I practice has a policy of only including 50% of any overtime as income for determination of child support. However any self employed person who works 60-70 hours per week has the entire income included because what that person earns is not "overtime." If the guidelines are not mandatory, there is not a need to have them as there will be no consistency from county to county or judge to judge.

These are just a few of the thoughts I have on the matter.

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